

# **EXHIBIT 16**

## **In the Matter of**

Case No. 18-cv-05775 (ERK)(TAM)

STAR AUTO SALES OF BAYSIDE, INC., et al.

v.

VOYNOW, BAYARD, WHYTE AND COMPANY LLP, et al.

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### **Deposition of Robert Seibel**

*Wednesday, February 8, 2023*

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The Little  
Reporting  
Company

469 Seventh Avenue  
12th Floor  
New York, NY 10018  
tel: 646-650-5055  
[www.littlereporting.com](http://www.littlereporting.com)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.  
(d/b/a STAR TOYOTA OF BAYSIDE),  
STAR AUTO SALES OF QUEENS, LLC  
(d/b/a STAR SUBARU), STAR HYUNDAI  
LLC (d/b/a STAR HYUNDAI), STAR  
NISSAN, INC. (d/b/a STAR NISSAN),  
METRO CHRYSLER PLYMOUTH INC. (d/b/a  
STAR CHRYSLER JEEP DODGE) STAR AUTO  
SALES OF QUEENS COUNTY LLC (d/b/a  
STAR FIAT) and STAR AUTO SALES OF  
QUEENS VILLAGE LLC (d/b/a STAR  
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE and COMPANY  
LLP, HUGH WHYTE, and RANDALL  
FRANZEN,

Case No.  
18-cv-05775  
(ERK) (TAM)

Defendants.

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February 8, 2023  
10:35 a.m.

Deposition of ROBERT SEIBEL, taken by  
Plaintiffs, held at the offices of Milman  
Labuda Law Group PLLC, 3000 Marcus Avenue,  
Suite 3W8, Lake Success, New York, before  
Lisa Hiesiger, a Shorthand Reporter and Notary  
Public within and for the State of New York.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

42

1 Seibel

2 Q. And was that brought up because you  
3 were alerted because of your review of the  
4 particular journals?

5 MS. FITZGERALD: Objection.

6 A. I can't recall at any point where I  
7 would have done a review of a journal. I'm not  
8 sure exactly what that means.

9 Q. Are you familiar with recap pages on  
10 Reynolds and Reynolds?

11 A. I'm familiar with that some types of  
12 reports on Reynolds and Reynolds have a recap  
13 page.

14 Q. What is on a recap page?

15 A. It gives, you know, various  
16 information about the schedule. Mainly the total  
17 of the balance of the schedule.

18 Q. It gives you the total of the  
19 balance?

20 A. Uh-huh.

21 Q. Does it also give you a breakdown of  
22 what journal entries comprise that balance?

23 A. I mean it's got various other  
24 information on there.

25 Q. Like what?

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

140

1 Seibel

2 A. I'm getting there. Okay.

3 Q. What is that document?

4 A. It's what I would call an interim  
5 letter.

6 Q. Does that look like a final of an  
7 interim letter or a draft of an interim letter?

8 A. No, it looks like a draft because  
9 there's no signature line at the bottom.

10 Q. Were interim letters -- well, you  
11 tell me, were you involved with writing interim  
12 letters?

13 A. Some.

14 Q. This particular one, do you know if  
15 you were involved in writing it?

16 A. Most likely not.

17 Q. Why would you say most likely not?

18 A. Because this is Star Nissan, usually  
19 I would be working on Toyota when we were out  
20 there.

21 Q. Who would work on Star Nissan?

22 A. Shawn.

23 Q. Before I get to one that is Toyota,  
24 for interim visits can you tell me what the  
25 process was once you got to Star Toyota?

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

141

1 Seibel

2 A. The process on an interim visit --

3 Q. Yes.

4 A. -- is what you're referring to. So  
5 we would go up there, we'd print out the trial  
6 balance, print out the schedules, take a look to  
7 see that some of the reconciliations and things  
8 are being done, see if we had any, if there's  
9 anything that would need to be adjusted in the  
10 company's books in order to get a good tax  
11 number, you know, to make sure that we were doing  
12 the proper quarterly tax estimates for their  
13 taxes. Just go through the books to see if  
14 there's any adjustments to the income that we  
15 would need to change anything on their taxes for.

16 Q. By an adjustment on the books, what  
17 do you mean by that?

18 A. So for instance, if you look at the  
19 receivables and you ask the controller and they  
20 tell you, oh, yeah, a lot of this money is, you  
21 know, money that from Alkarim's receivables that  
22 I don't think he's ever going to collect, so that  
23 might be something that we could write off at the  
24 end of the year, so we use that in there when  
25 calculating their estimates that we know that

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

142

1 Seibel

2 there are some write-offs there.

3 Sometimes you'd find things that are  
4 actually income adjustments, credits on the  
5 books, you know, that aren't clearing that, you  
6 know, was really income that hadn't been picked  
7 up. So you'd factor that in. Things of that  
8 sort.

9 Q. The adjustments, wouldn't that  
10 usually happen at year-end?

11 A. To actually write stuff off of the  
12 books you would do at the end of the year, but  
13 you still want to have your arms wrapped around  
14 what adjustments are out there as the year's  
15 going on so that you don't have surprises and so  
16 you can give the client an accurate picture of  
17 what their tax liability is going to be.

18 You certainly don't want to wait  
19 until April 15th to give them an accurate picture  
20 of what their tax liability is going to be.

21 Q. You mentioned printing a trial  
22 balance.

23 A. Uh-huh.

24 Q. Where is that printed from?

25 A. Reynolds and Reynolds.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

143

1 Seibel

2 Q. And schedules, what schedules are  
3 printed?

4 A. You'd want to print out all the  
5 receivables, you'd want to print the inventory  
6 schedules, your payable schedules, various  
7 different accounting schedules that relate to the  
8 different account balances on the trial balance.

9 Q. That would all be printed from the  
10 Reynolds and Reynolds system?

11 A. Yeah, those items would be printed  
12 from Reynolds and Reynolds.

13 Q. Is there any schedule that does not  
14 relate to the trial balance?

15 A. I'm not sure what you mean by that.

16 Q. Well, you mentioned all receivables,  
17 inventory, I think you said, did you say payroll?

18 A. No.

19 Q. Which one did you say after  
20 inventory?

21 A. Payables, receivables, inventory.

22 MS. FITZGERALD: Then he said other  
23 schedules that relate to the trial  
24 balance.

25 THE WITNESS: Yeah.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

156

1 Seibel

2 MR. MULÈ: Yes, it is.

3

4 Q. Mr. Seibel, I present to you what is  
5 marked as Exhibit 17 for identification. It's a  
6 compilation of it is a June 8, 2011 e-mail cover  
7 page along with various letters, the first one is  
8 to Michael Koufakis regarding Star Toyota Bayside  
9 May 30, 2011, the next one is June 1, 2011 to Mr.  
10 Steven Koufakis regarding Star Mitsubishi, the  
11 following is May 30 to Mr. John Koufakis  
12 regarding Star Hyundai, and then May 30 to John  
13 Koufakis regarding Star Nissan, and that's it.

14 Are those interim letters?

15 A. I'll get there in a second.

16 MS. FITZGERALD: Did you include  
17 Chrysler in your question? Because  
18 Chrysler is part of the exhibit as well.  
19 June 1, 2011.

20 MR. MULÈ: I did not.

21 Q. So Star Metro Chrysler Jeep to Mr.  
22 Steven Koufakis June 1, 2011.

23 A. Okay, I'm sorry, what was the  
24 question?

25 Q. These are interim letters?

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

157

1 Seibel

2 A. They appear to be.

3 Q. Did you have a hand in drafting the  
4 interim letter that is addressed to Mr. Michael  
5 Koufakis regarding Star Toyota of Bayside?

6 A. It's likely I did.

7 Q. Looking at the first page, the e-mail  
8 of this exhibit. It is to Michael Koufakis from  
9 Randy and it has the attachments listed, it says  
10 "Hi Mike, Attached are the interim letters. We  
11 have some concerns with the parts departments.  
12 There is a lot of activity and the follow-up is  
13 not up to par. When you have some time I would  
14 like to go over our concerns in the parts  
15 department. Any questions, please don't hesitate  
16 to contact us with Randy." Do you see that?

17 A. I see it.

18 Q. Did you ever see this e-mail at  
19 sometime contemporaneous with the letters, do you  
20 think?

21 A. It's possible.

22 Q. Would you have been forwarded a copy  
23 of this at some point somewhat contemporaneous?

24 A. It's possible.

25 Q. Did you look at interim letters when

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

163

1 Seibel

2 this point in time or not. But we would have  
3 looked at to see all the bank accounts were  
4 reconciled.

5 Q. Did you do -- was there check  
6 reconciliation that was done?

7 MS. FITZGERALD: Object to form.

8 A. I'm not sure what you're referring  
9 to.

10 Q. This letter makes a number of  
11 recommendations, right? If you look at the  
12 second page, "Accounts receivable, We recommend  
13 that Al review the receivable list."

14 A. Uh-huh.

15 Q. I think it means at least weekly, "to  
16 determine if any customers have not paid. He  
17 should then follow up with customers immediately  
18 to get the unpaid balances collected," right?

19 A. Uh-huh, I see it.

20 Q. And then --

21 A. And that's what we were talking about  
22 earlier that, you know, we had brought up to  
23 management about the issues in the parts  
24 department. Here, and I think there were other  
25 examples where we brought it up and, you know,

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

164

1 Seibel

2 nothing was being done.

3 Finally leading to that meeting that,  
4 you know, with Alkarim and Vivian and Mike  
5 Koufakis and John Koufakis III and all that to go  
6 over it, and still the stuff wasn't being  
7 addressed, other than maybe closing tickets. But  
8 the underlying business practices that were  
9 leading to this weren't being changed or weren't  
10 being addressed.

11 Q. So looking at the next page under new  
12 and used vehicle physicals, the very first  
13 sentence says "In order to maintain proper  
14 internal control over your vehicle inventory, we  
15 recommend that you have someone independent of  
16 the sales department write up a blind count  
17 listing of all new and used vehicles located on  
18 the dealership's property." That's an internal  
19 control recommendation as well, right?

20 A. Well, it's an observation that we  
21 made at the time that Vivian had said that they  
22 weren't doing physicals of the vehicle  
23 inventories, and we recommended to them that you  
24 should be doing physicals of your inventories to  
25 make sure your inventories are there.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

165

1 Seibel

2 Q. So this was something that you're  
3 saying that Vivian brought to your attention?

4 A. Yeah, somehow it came up, and yeah,  
5 we found out from Vivian that they weren't doing  
6 physicals.

7 Q. Looking at the next page, again back  
8 to the parts department, it says "We looked at  
9 the open parts invoices, nothing there are many  
10 open," I think it means "noting there are many  
11 opens part tickets dating back to as early as  
12 August 2006."

13 Then going down to the second to last  
14 sentence, it says "We recommend management review  
15 the open parts invoices with the parts manager  
16 and institute a procedure for future parts  
17 orders." Do you see that?

18 A. No.

19 MS. FITZGERALD: Where did you jump  
20 to?

21 MR. MULÈ: Page 4 at the top, the  
22 second to last sentence at the top.

23 A. Oh, I'm sorry. Okay.

24 Q. That's another recommendation  
25 regarding the parts department, right?

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Robert Seibel --- February 8, 2023

166

1 Seibel

2 A. It is.

3 Q. Going to the last page, the first  
4 paragraph says "It may be advantageous for the  
5 parts department to assign someone or, if  
6 necessary, hire a new person to act as a liaison  
7 person to work with the parts department and the  
8 accounting department to help control these open  
9 parts tickets, assist with collection, determine  
10 what the customers are paying for, help send out  
11 the monthly accounts receivable statements, which  
12 parts have been ordered, and if a deposit is  
13 received, track and account for bounced checks."  
14 Do you see that?

15 A. Uh-huh.

16 Q. So that's a recommendation to either  
17 assign someone to do work or to perhaps hire  
18 someone else to act as a liaison?

19 A. It's a recommendation to management  
20 to address the situation.

21 Q. So in this situation Vivian alerted  
22 you or someone else at Voynow to something and  
23 you looked at the records because you listed  
24 actually specific customers with respect to the  
25 parts department, right?